THE LOCAL GOVERNMENT ORDINANCE, 1961

(Ordinance No. 11 of 1961)

THE KOTA KINABALU MUNICIPAL COUNCIL (EARTHWORKS) BY-LAWS, 1987 (G.N.L. 22 of 1988)

In exercise of the powers conferred upon it by subsection (1) of section 50 of the Local Government Ordinance, 1961, the Kota Kinabalu Municipal Council (hereinafter referred to as the Council) has made the following By-laws:-

PART I

Citation.

1. These By-laws may be cited as the Kota Kinabalu Municipal Council (Earthworks) By-laws, 1987.

Commencement.

2. These By-laws shall apply only to Kota Kinabalu Municipal Council area and shall come into force on the 1st day of May, 1987.

Interpretation.

3. In these By-laws unless the context otherwise requires –

"Council" means Kota Kinabalu Municipal Council;

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"Earthworks" includes any act of excavation, transportation, levelling, filling with any material, piling, the construction of foundations or felling of trees, in any land, or any other act of dealing with or affecting any land;

"Engineer" means a professional engineer registered under the Registration of Engineers Act, 1967 and practising with the written approval of the Board of Engineer;

"Foundation earthwork" includes the construction of foundation, basement, substructure, piling, underpinning and trenching;

"Minor earthworks" means any of the earthworks specified in Appendix D;

"Owner" means (i) the registered owner of the property or (ii) the leasee of a lease including a sublease whether registered or not or (iii) the agent or trustee of the owners including contractors or sub-contractors duly authorised in writing;

"Ordinance" means the Local Government Ordinance, 1961;

"Person" means any individual and includes any company or association or body of persons corporate or unincorporated;

"Plans" includes amended plans;

"Vehicle" means a structure capable of moving and used for the conveyance of earth and which maintains contract with the ground when in motion.

PART 1A

EARTHWORKS APPROVAL

Earthworks approval

3A. No person shall commence or carry out or permit to be commenced or carried out any earthworks without having first submitted to the Mayor plans and specifications in respect of the earthworks and obtained the approval of the Mayor thereof.

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PART II

SUBMISSION OF PLANS

Plans of earthworks to be submitted and certified.

4. (1) Plans relating to earthworks required to be submitted shall be submitted in accordance with these By-laws and shall contain the particulars required under these By-laws.

(2) Such plans shall be submitted and signed by an Engineer qualified in Civil Engineering and shall -

(a) contain a certification by him as in Form EW1 of Appendix A that the specifications and particulars stated therein are correct; and

(b) be countersigned by the owners and shall bear the full address of the owners as the case may be;

(c) the Council shall within 90 days of the submission of the said plans notify the Engineer submitting the same whether the plan is approved or not.

(3) The plans and specifications approved by the Council may be resubmitted for amendment, variation or alteration but in such a case, the requirements under paragraph (2) shall apply mutatis mutandis.

4A. The Engineer shall pay a processing fee of RM100.00 to the Mayor for each submission of the plans under By-law 4.

Conditions, fees and deposit for earthworks plans approval

4B. The Mayor may approve the plans subject to -

(a) such conditions as may be specified therein;

(b) payment of the fee as set out in By-law 20; and

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(c) payment of a deposit of such sum and in such mode of payment as the Mayor may determine to ensure that the conditions specified therein and the provisions of these By-laws are duly observed.

Forfeiture of deposit

4C. The Mayor may forfeit the deposit paid under By-law 4B *(c)* in whole or in part if the Mayor is satisfied that there has been a breach of the conditions specified in the earthworks plan or contravention of the provisions of these By-laws.

Refund of deposit

4D. The deposit paid under By-law 4B *(c)* shall unless be forfeited under By-law 4C refunded with no adjustment to the interest on the amount deposited after the engineer submitting the plans has given notice of completion under By-law 5 (4) to the Mayor.

Duties of Engineer.

5. (1) The Engineer submitting the plans under By-law 4 shall be responsible for the execution of the earthworks in accordance with the approval plan and shall continue to be so responsible until the completion of the earthworks unless –

(a) with the agreement of the Council, another Engineer is appointed by the owner to take over;

(b) the Council agreed to accept his withdrawal.

(2) Where the Council agrees to accept an Engineer's withdrawal under paragraph (1) *(b)* the earthworks shall not commence or continue until another is appointed to take over.

(3) The Engineer submitting the plans shall notify the Council in writing as in Form EW2 of Appendix B of the intention to commence or resume earthworks and shall include particulars of the intended work.

(4) The Engineer submitting the plans shall within one week of the completion of the earthworks, notify the Council in writing of its completion as in Form EW3 of Appendix C.

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(5) For the purpose of this By-laws the term "Engineer submitting the plans" shall include the Engineer re-submitting plans and any Engineer appointed to take over.

Plans to be in triplicate.

6. (1) All plans shall be submitted in triplicate.

(2) All plans shall be drawn with differences of material shown in colour.

Plans and particulars to be submitted.

7. Unless exempted by the Council, the following plans and specifications and particulars shall be submitted –

(1) Building with appropriate layout site plan to show that the temporary offices/accommodation at work sites shall be the ratio of 1 W.C., 1 shower and 1 wash hand basin for every 25 workers or less. In addition, a 600mm. urinal shall be provided for every 25 male workers or less. These toilet facilities shall be connected to a sewer/temporary septic tank approved by the Council.

(2) A site plan drawn to a scale of not less than 1:1000 showing in clear colour the site of the earthworks, road access, main streams, natural water courses, drains and adjoining lands or part thereof.

(3) Plans at two metres contours showing both existing grounds on which the earthworks are to be carried out and adjoining lands up to minimum of 20 meters or more from the site boundaries depending on the topography of the surrounding area and as required by the Engineer of the Council to a scale of not less than 1:500.

(4) A statement on the sub-surface geology including nature of bedrock and alluvium.

(5) Plans to a scale of not less than 1:500 showing :

(a) the total area of the site and the area involving earthworks in hectares;

(b) finished formation level including :-

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(i) platform levels for the building or buildings;

(ii) finished road levels;

(iii) drain invert levels and crossing;

(iv) points of discharge or drainage;

(v) all relevant boundary marks.

(c) Diversion of any mainstreams and natural water courses or improvements thereto;

(d) Any excavation, cutting or filling;

(e) Protection to the earthworks against erosion, including protection during the continuance of the earthworks;

(f) Provisions of silt traps, settling ponds including provision during the continuance of the earthworks;

(g) Provision of adequate drainage to drain the site.

(6) Longitudinal and cross-section diagrams of not less than 1:100 for the vertical scale and of not less than 1:500 for the horizontal scale showing the mass haul of the earthworks to be carried out on the site;

(7) The method of excavation, levelling, filling, protection piling or any other geo-technical processes;

(8) Schedule of the earthworks and the order in which the earthworks are to be phased;

(9) Plan showing the haulage route to a scale of not less than 1:2,500 and the hours during which the route is to be used;

(10) Plan showing the entrance and the egress from the site to and all the necessary signboards to the satisfaction of the Council;

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(11) The amount of earth to be excavated or filled and place when such excavated earth is to be deposited or the earth to be used for filing is to be obtained and accompanied with approval by relevant authority to move such earth;

(12) The precautions taken to protect the adjoining lands, buildings, roads and other properties;

(13) Detailed plans to a scale of not less than 1:50 and specifications of any close sheet piling or other retaining structure or stabilization of slope required under these By-laws and showing the expected dip and strikes of bedrock and the expected depth to bedrock;

(14) The calculations and all ground levels and contours referred to in this By-law shall be drawn with reference to the Lands and Surveys bench mark.

Plans may be submitted separately.

8. The plans and specifications required under By-law 7 may, with the permission of the Council be submitted separately but in such a case the certification required under By-law 4 shall also accompany each subsequent set of plans and specifications provided that no earthworks shall commence until all the plans and specifications required under these By-laws have been approved subject to By-law 4 (2) *(c)*.

Relevant codes of practice to be complied with.

9. (1) Wherever applicable the plans, specifications and calculations submitted under these By-laws shall comply with the following codes of practice with the latest amendments:-

(a) Site investigation – British Standards Code of Practice 2001 or equivalent acceptable to the Institute of Engineers Malaysia;

(b) Earthworks - British Standards Code of Practice 2003 or equivalent acceptable to the Institute of Engineers Malaysia;

(c) Foundation - British Standards Code of Practice 2004 or equivalent acceptable to the Institute of Engineers Malaysia;

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(d) Civil Engineering Code of Practice No. 2 on Earth Retaining Structures, issued by Institute of Structural Engineers, United Kingdom or equivalent acceptable to the Institute of Engineers Malaysia;

(e) Foundation and substructures for non industrial buildings of not more than 4 storeys – British Standard Code of Practice 101 or equivalent acceptable to the Institute of Engineers Malaysia.

(2) Where there is issued a corresponding Malaysian Standard Code of Practice after coming into force of these By-laws, the same shall supersede the British Standard Code of Practice on the same subject matter.

PART III

SPECIAL PROVISIONS RELATING TO FOUNDATION EARTHWORKS

Requirements of close steel sheet piling.

10. (1) *(a)* The sides of all foundation earthworks exceeding 3 metres in depth shall be protected by close steel sheet piling;

(b) In other cases not exceeding 3 metres in depth other alternatives method of protection to the banks shall be erected.

(2) The requirements under paragraph (1) *(a)* and *(b)* may be relaxed, varied or exempted by the Council on being satisfied from specifications designs and calculations submitted that an alternative method of protection is at least as effective or better and will give adequate protection to adjoining properties or that they are unnecessary, as the case may be.

Soil to be investigated and water table to be determined.

11. Soil investigation shall be carried out and the depth of water table in any foundation earthworks need be determined; and the Engineer submitting the plans under By-law 4 shall submit the soil investigation reports and shall certify that any lowering of water table will not effect any surrounding structures, roadways or any other properties.

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PART IV

PROVISIONS RELATING TO GENERAL EARTHWORKS

Identification of boundaries.

12. Boundaries are to be visibly identified by licensed surveyor with painted wooden sticks before any earthworks can commence.

Trees not to be cut until site is to be worked.

13. Where there are trees in the earthworks site, the same shall not be cut or cleared until the earthworks site is ready to be worked.

Top soil.

14. Top soil to the depth between 8cm to 15cm shall not be discarded from the site during site preparation without the consent of the Council. This shall be set aside by the owner for landscaping purpose on the site or given to Kota Kinabalu Municipal Council free of charge for beautification purposes if required by the Council.

Earthworks exceeding three metres.

15. (1) All earthworks exceeding 3 metres in height or depth shall, unless exempted by the Council be protected by a retaining structure on stabilisation of slopes.

(2) All earthworks where permanent retaining structure or stabilisation of slopes are exempted by the Council, shall be provided with temporary retaining structures or stabilisation of slopes during the continuance of such earthworks.

(3) All earthworks shall be carried out in such a way as to give adequate safeguard to all adjacent properties at all times.

Phasing of earthworks.

16. Earthworks to be carried out shall be phased in the order submitted under By-law 7 *(b)* and no earthworks shall commence or continue to the next phase unless the Engineer

submitting the plans certifies in writing that the earthworks are not likely to cause nuisance or damage to the surrounding properties.

Conditions may be imposed at any time before work can continue to the next phase.

17. The Council may at any time before any earthworks may be continued to the next phase require :–

(a) that drainage and deviation of main streams and natural watercourse, including provisions of adequate bunds and culverts are provided;

(b) that silt traps or settling ponds are adequately provided and properly maintained;

(c) that retaining structures, where necessary, are provided;

(d) that the slopes are adequately protected against erosion;

(e) that the foundation of the road is laid and the surface of such road is sealed so as to prevent silt being washed into existing water courses;

(f) that fills are compacted.

Control and maintenance of earth movements.

18. Unless exempted by the Council the following shall be complied with:-

(a) the owner shall provide a paved wash bay for washing of all vehicles leaving the worksite into a roadway;

(b) all washing from the work bay shall be directed into a silt trap measuring not less than 1 m. x 1 m. x 1.2 m. in depth before its final discharge into a suitable outlet;

(c) the owner undertake to prevent the incidence of earth droppings from earth moving vehicles. The loading bay of such vehicles shall be covered by canvas or other suitable material. In the event that any earth dropping occurs

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into a public road/drains such earth shall be removed by the owner at his own expense to the satisfaction of the Council;

(d) the owner shall ensure that no obstruction is caused to any drain, public street/ road during the course of executing earthworks;

(e) the owner shall provide drainage system to drain off all surface water from the work site into a silt trap before its final discharge into a suitable outlet drain, canal, stream or river. Such silt trap provided shall be of adequate size and regularly desilted throughout the duration of the earthworks;

(f) the owner shall maintain all drains, silt traps, settling ponds to the satisfaction of the Council;

(g) all construction debris and domestic refuse shall be deposited of at the Council dumping ground;

(h) all other nuisances or damages to surrounding properties are to be fully rectified by the owner at their own cost at a period specified by the Council;

(i) any seepage arising out of the earthworks shall be underdrained to the satisfaction of the relevant authority and no ponding be allowed;

(j) where earth transportation are involved, permit should be obtained from the Council subject to the conditions set out by the Council.

Further plans specifications etc. if required.

19. The Council may, where it is considered necessary, require further plans, specifications and particulars to be submitted or given further directions or make further amendments to the plans or impose further conditions if deemed fit and such directions, amendments or conditions shall be complied with.

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Earthworks Plans Fees

20. The fees to be paid under these By-laws shall be as follows -

(i)	where the volume of earthworks does not exceed 500 cubic metres	-	RM300.00
(ii)	Where the volume of earthworks exceeds 500 cubic metres but does not exceed 10,000 cubic metres	-	RM600.00
(iii)	Where the volume of earthworks exceeds 10,000 cubic metres but does not exceed 20,000 cubic metres	-	RM1,000.00
(iv)	every additional 10,000 cubic metres or part thereof exceeding 20,000 cubic metres	-	RM500.00

Inspection of plans.

21. (1) An approved plan may on payment of a fee of 30.00 ringgit be inspected in the office of the Council.

(2) With the approval of the owner and the payment of a fee of 30.00 ringgit for each plan, the plans may be copied and for an additional fee of 30.00 ringgit the plan may be certified by the Council.

Offences.

22. Any person who –

(a) submit plans, specifications, calculations or particulars which are false in any material or particulars; or

(b) fails to comply with any conditions or direction given or imposed under these By-laws; or

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(c) fails to give the notice required under by-law 5 (4) and 5 (5); or

(d) contravenes any of the provisions of these By-laws,

shall be guilty of an offence and shall on conviction be liable to a fine for any one offence the sum not less than RM5,000.00 and not exceeding RM100,000.00 or a term of imprisonment of one year or both such fine and imprisonment and in the case of a continuing offence shall be liable to a fine not exceeding RM5,000.00 for every day during which such offence is continued.

Compounding of offences.

23. (1) The Mayor may compound any offence committed by any person under these By-laws by making a written offer to the person to compound the offence upon payment by that person of a sum of money not exceeding RM5,000.00.

(2) An offer under paragraph (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted.

(3) Where the amount specified in the offer is not paid within the time specified in the offer, or within such extended period as may be granted by the mayor, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(4) Where an offence has been compounded under paragraph (1), no prosecution shall thereafter be instituted in respect of such offence against the person to whom the offer to compound was made.

Power to stop work on non-compliance.

24. Any person who carries out earthwork in contravention of the provisions of any of these By-laws shall upon receipt by him of a written order from the Council to stop work immediately. The work shall be allowed to resume after receiving a written permission from the Council.

Power of arrest

24A. (1) The Mayor or any officer duly authorized by the Mayor may arrest without warrant any person who commits in his presence or whom he reasonably believes to have

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committed any offence under these By-laws -

(a) if the name or address of the person is unknown to him and the person declines to give his name and address; or

(b) if there is reason to doubt the accuracy of his name or address.

(2) A person arrested under these By-laws shall be detained and shall be brought before a Magistrate's Court within twenty-four hours unless his name and address are sooner ascertained.

Power of seizure and forfeiture

24B. (1) If the Mayor or any officer duly authorized by the Mayor has any reason to believe that any person has committed an offence under these By-laws, such officer may seize and detain any produce, item, tool, instrument, machinery, equipment or other thing whatsoever used or reasonably suspected of having been used in the commission of an offence.

(2) All produce, items, tools, instruments, machinery, equipment or other things whatsoever liable to seizure under these By-laws shall be liable to forfeiture provided that the Mayor or any officer duly authorized by the Mayor may temporarily release such produce, items, tools, instruments, machinery, equipment or other things to the owner of the same on security being furnished to his satisfaction that such produce, item, tool, instrument, machinery, equipment or other thing shall be surrendered to him on demand or to produce it before a Court of competent jurisdiction provided further that if there be no prosecution with regard to anything seized under these By-laws, such produce, items, tools, instruments, machinery, equipment or other things shall be taken and deemed to be forfeited at the expiration of one calendar month from the date of seizure unless claim thereto is made before such date.

(3) Any person asserting that he is the owner of any goods or thing liable to forfeiture under By-law 24B (2) and that it is not liable to forfeiture may personally or by his agent authorized in writing give written notice to the Mayor that he claims the same provided that any such application shall be made before the expiration of one calendar month from the date of seizure.

(4) Notwithstanding anything in these By-laws if anything seized under these By-laws is subject to speedy and natural decay or deterioration, the Mayor or any officer duly

authorized by the Mayor may sell the thing and shall thereafter deal with proceeds of such sale as he would have dealt with such thing had it not been sold.

(5) All things forfeited shall be delivered to the Mayor or any officer duly authorized by the Mayor and shall be sold in accordance with the provisions of the Ordinance or under any other law for the time being in force.

Exemptions.

(4) The By-laws shall not apply to –

(a) earthworks carried under any written law relating to mines and quaries;

(b) minor earthworks.

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APPENDIX A

FORM EW1

[By-law 4 (2) *(a)*]

CERTIFICATION OF EARTHWORK PLANS

(for endorsement on plans to be submitted for approval)

…….. 19……..

President,
Kota Kinabalu
Municipal Council.

I certify that the details in plan (s) namely ……..
…….
on Lot/s …….. Jalan ……
…….
…….. for ……..
are in accordance with the requirements of the Kota Kinabalu Municipal Council (Earthworks) By-laws, 1987 and I accept full responsibility accordingly.

…….

Submitting Person

Name ……..
Address ……..
Profession ……..
Registration No ……..

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APPENDIX B

FORM EW 2

[By-law 5 (3)]

NOTICE OF COMMENCEMENT/RESUMPTION OF EARTHWORK OPERATIONS

…… 19 ……..

President,
Kota Kinabalu
Municipal Council.

I give notice that after the expiration of 4 days from the date of receipt of this notice I intend to commence/resume earthworks operations namely ……
……
on Lot/s ……
……
…… for ……..
in accordance with the approved Plan No ……..
Dated ……

……..

.

Submitting Person

Name ……..
Address ……..
Profession……
Registration No……

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APPENDIX C

FORM EW 3

[By-law 5 (4)]

NOTICE OF COMPLETION OF EARTHWORK

…… 19 ……..

President,
Kota Kinabalu
Municipal Council.

I certify that the earthworks in plan (s) namely ……
……..
on Lot/s …….. Jalan ……..
……..
…….. for …….
has been carried out in accordance with –

(a) approved plan(s); or

(b) approved plan(s) with amendments for which I undertake to submit amended plans for approval before the earthworks is completed.

I accept full responsibility for ensuring that the amendments will be in accordance with all the Town Planning and Building requirements and the Kota Kinabalu Municipal Council (Earthworks) By-laws, 1987.

……

Submitting Person

Name…….
Address…….
Profession…….
Registration No……

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APPENDIX D

MINOR EARTHWORKS

[By-law 3]

1. Excavation for landscaping without structures to a depth not exceeding 1 metre.

2. Excavation for the planting or uprooting of trees or poles to a depth not exceeding 1 metre and 10 cubic metres of earth.

3. Excavation for any pit or foundation not less than 3 metres away from the boundary line and not exceeding 2 metres in depth and 10 cubic metres of earth provided that the Engineer submits a certification in FORM EW in Appendix E.

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APPENDIX E

FORM EW4

CERTIFICATION OF MINOR EARTHWORK

[Paragraph 3 of Appendix D]

Mayor of the City of Kota Kinabalu,

I hereby certify that the earthworks to be carried out on Lot No. .....
.....
for .....
is of a minor character in accordance with the Appendix D of the Kota Kinabalu Municipal Council (Earthworks) By-laws 1987.

2. I understand that the exemption from the requirements of the Kota Kinabalu Municipal Council (Earthworks) By-laws 1987, will not absolve me from the liability to any person for any damage caused by the said earthwork.

3. I hereby agree to indemnify and keep indemnified the Mayor of the City of Kota Kinabalu, against any claim, damage, loss, action or proceeding that may be brought against him arising out of and incidental to the said earthwork.

4. I further agree to submit plans and specifications relating to the said earthwork in the event that the earthwork exceeds the volume specified in Appendix D.

Date: .....

Engineer's name: .....
.....

Address: .....
.....

Board of Engineer Registration No.: .....

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Dated this 23rd day of June, 1988.

DATUK PETER D. CHEONG,
President,
Kota Kinabalu Municipal Council

I approved the foregoing By-laws.

Dated this 24th day of August, 1988.

DATUK AHMAD BAHROM BIN DATUK HAJI
ABU BAKAR TITINGAN,
Minister of Local Government and Housing.

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